IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 253 OF 2007

Shri Changdeo Chandar Bahira
Age 41 yrs. Occ: Business
Residing at Village Takka,
Taluka Panvel, Dist. Raigad ..Petitioner
Vs.
1. Deputy Commissioner of Police Zone II, Panvel
2. The State of Maharashtra ..Respondents

Mr.S.R. Chitnis, Senior Advocate with Ms. V.R. Raje
for petitioner.
Mr. D.P. Adsule, APP for State.

CORAM: B.H. MARLAPALLE,J.

Reserved on : July 16, 2007.

Pronounced on : July 20, 2007.

P.C.:

1. Rule. Rule is taken up for hearing finally forthwith. Heard Mr. Chitnis the learned Senior Counsel with Ms. Raje for the petitioner and Mr.Adsule, the learned APP for the State.

2. The petitioner was issued a show-cause notice dated 11/11/2006 for his externment under Section 56 read with Section 59 of the Bombay Police Act, 1951 (for short the said Act) and he was externed by the order dated 18/11/2006 for a period of two years from

the Districts of Greater Mumbai, Thane and Raigad and the said order has been passed by the respondent no.1 as the Competent Authority under the said Act. The petitioner had filed an appeal against the order of externment before the State Government under Section 60 of the said Act along with an application for stay. At the same time, he had also challenged the order of externment in Criminal Writ Petition No.2416 of 2006 after the stay petition was rejected. There were similar connected petitions i.e. Writ Petition Nos.2411, 2412, 2413 and 2417 of 2006 and all these five petitions came to be disposed off by a common order dated 13/12/2006 by this court directing the State Government to hear and dispose off the pending appeals filed by the petitioners by 30/1/2007 and during the pendency of appeals, the externment orders would remain stayed. Subsequently, appeals of all the five petitioners were heard and the appeals of other four petitioners were allowed, but the appeal of the present petitioner was dismissed and the externment order was confirmed by the Appellate Authority by his order dated 3/2/2007. Hence, this fresh petition.

3. Mr.Chitnis the learned Senior Counsel for the

petitioner submitted that out of the five criminal cases listed in the externment order, in the case arising from CR No.488 of 1996 he was acquitted and the remaining three criminal cases pending were for the period from 1999 to 2006. However, no in-camera statements were recorded and relied upon in the impugned order of externment so as to record an opinion in the externment order that the witnesses were reluctant and scared to come in the open public and depose against the petitioner. As per Mr.Chitnis, this is a mandatory requirement and in the absence of such in-camera statements having been recorded and relied upon in the externmnent order, the powers under Section 56(1) of the said Act could not be invoked. The learned Senior Counsel relied upon the decisions of this court (DB) in the case of Ram Narayan Patil vs. The State of Maharashtra and ors. **[1987 (1) Bom.C.R. 471]**, Yashwant Damodar Patil vs. Hemant Karkare, Deputy Commissioner of Police, Thane and anr. **[1989 Mh.L.J. 1111]** and Chhotu Siddinath Kunwar vs. State of Maharashtra and anr. **[1989 Mh.L.J. 1021]**. He also relied upon the order passed in Criminal Writ Petition No.636 of 2006 and more particularly the observations made in para 7 which read as under:-

"7. This most important circumstances, that in the present case witnesses were coming forward to depose against the petitioner has not been taken into consideration by the externing authority and it is clear that the averment in the order of externment as well as the show cause notice is based on no material. In my view, it clearly shows that there was non-application of mind on the part of both the authority and consequently, the externment order would have to be quashed and set aside."

4. The Assistant Commissioner of Police, Panvel Divsion, Navi Mumbai has filed affidavit in reply and has admitted that in the Criminal Case arising from CR No.488 of 1996 the petitioner has be acquitted and he had recommended on 16/11/2006 after completing the enquiry to extern petitioner under Section 56(1)(b) of the said Act. This affidavit is silent on the issue of in-camera statements and it will have to be, therefore, presumed that no such statements were recorded. The original record is placed before me and the learned APP fairly conceded that no such

statements were recorded in the present case. In the case of Yashwant Damodar Patil this court observed, inter alia, as under:-

> "...If action is proposed to be taken against him on the ground that the proposed externee is engaged or is about to be engaged in the commission of an offence involving force or violence, then he must be told so and he must also be informed that in the opinion of the officer witnesses are not willing to come forward to give evidence in public against him. Similarly, if an action is proposed to be taken against the proposed externee on the ground that he is engaged or is likely to be engaged in the commission of offences punishable under Chapter XII or Chapter XVI or Chapter XVII of the Indian Penal Code, then he must be informed about the same and he must also be necessarily informed that witnesses are not coming forward to depose against him. The fact that the proposed externee is engaged or is about to be engaged in one or the other type of the activity or movements in clauses

(a) and (b) of section 56(1) of the Bombay Police Act, is not sufficient by itself to warrant an order of externment. That fact, coupled with the opinion formed by the designated officer that witnesses are not willing to come forward to give evidence in public for the reasons mentioned in clauses (a) and (b) of section 56(1) of the Bombay Police Act, will provide a proper basis for the exercise of the power of externment under the provisions of the Act."

5. Section 56 (1) of the said Act are four clauses, namely, (a), (b), (bb) and (c) and we are concerned in the instant case with clauses (a) and (b) which read as under:-

(a) that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property or

(b) that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an

offence involving force or violence or an offence punishable under Chapters XII, XVII or XVII of the Indian Penal Code or in the abatement of any such offence and when in the opinion of such officer witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property,

6. The show-cause notice was issued under Clauses (a) and (b) of Section 56(1) of the said Act and the externment order dated 18/11/2006 is passed accordingly and the same has been confirmed by the Lower Appellate Authority. If there is no material on record before the Competent Authority to form an opinion that there were no witnesses willing to depose against the petitioner in public due to apprehension or fear to their personal security or property or such an opinion has not been recorded in the externment order, such an order passed under Clause (b) of Section 56(1) of the said Act would be unsustainable.

7. Now coming to Clause (a) of Section 56 (1) of

the said Act. It states that the externment order could be passed in case the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property. There is no material in the externment order to the same effect. On the contrary, the witness Shri Padmakar Bharati Kotkar who appeared before the Enquiry Officer stated that he knew the petitioner from his childhood and he is a supplier of construction material and that he is an active worker of the Peasant and Workers party. The witness further stated that the cases registered against the petitioner in the police station are mainly on account of political rivalry and that in his village there is no terror or scare on account of the petitioner's activities. Pendency of four criminal cases, either registered with the police station or pending for trial before the Sessions Court, per se, would not be a material to justify an order of externment. In the case of Pandharinath Shridhar Rangnekar vs. Dy. Commissioner of Police, State of Maharashtra **[AIR 1973 SC 630]** their Lordships, while dealing with the interpretations of Section 56(1) of the Bombay Police Act stated that an order of externment can be passed under Clause (a) or (b) of

Section 56, if an only if, the authority concerned is satisfied that the witnesses are unwilling to come forward to give evidence in public against the proposed externee by reason of apprehension on their part as regards the safety of their person or property.

8. Thus, the tests laid down to sustain the order of externment passed under Section 56(1) (a) and (b) are not satisfied in the instant case and the Lower Appellate Authority failed to consider the law laid down by this court as well as the Supreme Court while dealing with the orders of externment passed under said section.

9. Consequently, this petition has to succeed and the same is hereby allowed. The impugned order of externment dated 18/11/2006 and the order dated 3/2/2007 passed by the Lower Appellate Authority confirming the same are hereby quashed and set aside.

Rule is made absolute accordingly.

(B.H. Marlapalle,J.)